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Of Attorneys for Defendants Will Stutesman,  
Officer Grose, Officer Pieske, Sgt. McAlpine,  
and the City of Eugene.

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
EUGENE DIVISION

**RONDA MCGOWAN**, Personal  
Representative for the Estate of Brian  
Babb, **LEE BABB, CONNOR BABB**,  
by and through his Guardian Ad Litem,  
**STEPHANIE WOODCOCK**, and  
**KAYLEE BABB**,

Case No. 6:17-cv-00424-TC

**Second  
Declaration of**  
Nathan Pieske

Plaintiffs,

vs.

**WILL STUTESMAN, OFFICER GROSE,  
OFFICER PIESKE, SGT. MCALPINE,  
CITY OF EUGENE**, a municipal subdivision  
of the State of Oregon, **JANE DOE CALL  
TAKER**, and John and Jane Does 1-10.

Defendants.

I, Nathan Pieske, under penalty of perjury do hereby declare as follows:

I am over the age of 18, and I make this declaration based on my personal knowledge of the facts contained herein.

In listening to the live radio dispatch, Exhibit 103, at elapsed time 51:10, one can hear a voice say the following:

“Mary 12. Subject’s still down in the doorway. No movement. There is a rifle in his right hand, and he is still not moving.”

That voice is my voice, and I am the one talking over the radio. My call sign was “1 Mary 12” at the time of the incident, and I started off my statement by identifying myself. This statement was made by me as I was driving the BearCat to the front of the Babb house.

Using Exhibit 103, the shot fired by Stutesman was at elapsed time 45:08. The above statement can be heard being made by me at elapsed time 51:10, or 6 minutes and 2 seconds after the shot was fired ( $51:10 \text{ minus } 45:08 = 6:02$ ).

On the BearCat video, Exhibit 106, the front door of the Babb house opens up for the last time at elapsed time 15:37. The BearCat is crashing through the last fence at 21:40, and the rifle can be seen on the BearCat video laying on the front porch at elapsed time 21:40. So, the time from the front door opening up to when I drove the BearCat through the last fence ( $21:40 \text{ minus } 15:37 = 6:03$ ) is 6 minutes and 3 seconds. So, taking into account that Babb was not shot until a few seconds after the front door of the house opened up at elapsed time 15:37, this would indicate that I made my above statement as I was driving the BearCat through the last fence.

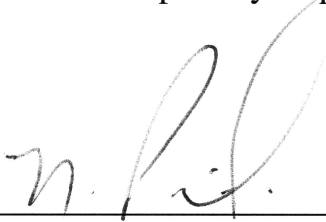
Since the rifle becomes visible in the BearCat video at 21:40, it is apparent that the rifle was laying on the front porch when I made my statement and the rifle was not in Mr. Babb’s right hand. It is also clear that no one, including any police officer, could have put the rifle on the front porch, because the rifle appears in the BearCat video on the front porch, before anyone went into the house. The BearCat

video shows everyone that went into the house and out of the house after the rifle was already on the front porch and after the shooting.

It should also be noted that none of us police officers at the scene could hear the conversation between Becky Higgins and the 911 operator, the transcript of which is marked as Plaintiffs' Exhibit 19. That call was not broadcast over the radio, and could not be heard over the radio by the officers at the scene.

PURSUANT TO 28 U.S.C § 1746, I declare under penalty of perjury that the foregoing is true and correct.

DATED: December 7, 2018.



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Nathan Pieske

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing DECLARATION OF NATHAN PIESKE on Plaintiffs on Tuesday, December 11, 2018, by notice of electronic filing using the CM/ECF System:

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Attorneys for Plaintiffs

Dated: Tuesday, December 11, 2018.

/s/ Robert E. Franz, Jr.  
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